which sufficiently showed that the fee of the street was not intended to pass under the deed. Yet in view of the extent to which the general rule is applied, this fact does not seem adequate to prevent its application here. The street might never be opened, as indeed was the fact in the principal case; or it might have been intended that the grantee should enjoy the use of the land until the street should be opened. The court further bases its opinion on the old New York city street cases, which held that the general rule did not apply to unopened streets in the city of New York. *In re Seventeenth Street*, 1 Wend. 262. These cases, admittedly applying a different rule in New York city from that prevailing in the rest of the state, have been severely criticised (see *Bissell* v. *New York Central Railroad Company*, *supra*), and cannot be considered good authority. It is therefore to be regretted that the court did not see fit to follow the opinion of the vigorously dissenting presiding justice.

WHAT IS A CORPORATION? — Formerly it may have been possible to give a satisfactory answer to this question, but not so to-day. At the time of Coke the division between a partnership and a corporation was marked. But with the growth of commerce a new sort of partnership has developed. In view of the benefits incidental to corporate action, the legislatures gradually provided that certain of the ordinary incidents of a corporation might be acquired by partnerships. Thus limited partnerships and partnerships not terminated by the death of a partner arose. So many indeed have become these legislative changes that what one may well call a new system of organizations has been created. At the same time the legislatures have more frequently limited the powers granted to companies organized for certain business purposes while continuing to employ the name "corporation" in their creation. Thus corporations almost shade into partnerships, while so-called partnerships on their part may possess the attributes of corporations; and this development has been so gradual that the new organizations retain both in popular usage and in statutes the name of the class from which they were evolved. Consequently it is apparent that a different result will be reached according as to whether the courts approach the matter with the hypothesis that an organization possessing certain attributes is a corporation or regard it, as the legislatures do, from the standpoint of the organization's origin. When it is remembered that the jurisdiction of a court over an action may depend on whether one of the parties is or is not a corporation, the importance of this question may be realized.

A recent decision of the Supreme Court of the United States turns upon this point. *Great Southern Hotel Co.* v. *Jones*, 177 U. S. 449. The plaintiff was a partnership association organized under a Pennsylvania statute which enacted that partnership associations might be formed by three or more persons, for a period of not more than twenty years, with limited liability, with power to sue and be sued and to acquire, hold, and convey real estate in the associate name, and governed by an elective board of managers; the shares to be personal property and transferable in such ways as the shareholders should provide, but in default of such provision a transferree was not to become a member of the corporation unless elected by the members. The association was held not to be a corporation. This decision follows several Pennsylvania and Massa-

chusetts cases. *Edwards* v. *Gasolene Works*, 168 Mass. 564; *Coal Co.* v. *Rogers*, 108 Pa. St. 147. On the other hand, it expressly overrules a well-considered decision of the Circuit Court of Appeals (6th Cir.), *Andrews Brothers Co.* v. *Youngstown Coke Co.*, 86 Fed. Rep. 585. Further, the leading case of *Liverpool Insurance Co.* v. *Massachusetts*, 10 Wall. 566, does not appear to have been called to the court's attention, and would seem to conflict with the principal case. Indeed, a Pennsylvania partnership association possesses more of the ordinary attributes of a corporation than the organization there held to be a corporation, as the latter could only sue and be sued in the name of an officer, and the liability of the stockholders was not limited. In one respect only is a Pennsylvania partnership association less like the normal corporation, — there is a provision for a *dilectus personarum* on the transfer of stock unless the members of the association, in their by-laws, otherwise provide. But that would seem to be really immaterial. It is often found in social clubs which are admittedly none the less corporations. It has even been said that no provision for succession is necessary. *Gifford* v. *Livingston*, 2 Denio, 395. The opinion of the court leaves to conjecture what attribute of a corporation was found lacking. But on the whole the test applied seems to be that an organization is or is not a corporation according as it is called by that or some other name in its charter, — certainly not a very scientific classification.

EFFECT OF NOLLE PROSEQUI IN MALICIOUS PROSECUTION. — A recent decision has reopened a controversy of long standing which had apparently been closed by a line of modern cases. The plaintiff was arrested on a warrant but the examining magistrate, without hearing any evidence, discharged the accused and dismissed the complaint. The court held this act equivalent to a *nolle prosequi* and therefore not a sufficient termination of the proceedings to maintain an action for malicious prosecution. *Ward* v. *Reasor*, 36 S. E. Rep. 470 (Va.). While this view has some backing, both reason and the trend of authority reject it. *Murphy* v. *Moore*, 11 Atl. Rep. 665 (Pa.).

In early times, the only remedy available for one who had been maliciously accused was conspiracy, and to maintain this, he must show a complete acquittal. But later, when an action for malicious prosecution was allowed, all that was necessary was a termination of the proceedings favorable to the accused. 2 Vin. Abr. 28. This distinction was not well understood by the courts and as, at that time, there was a mistrust of a *nolle prosequi* owing to its abuse by the public prosecutor, no little uncertainty as to its effect was caused. *Goddard* v. *Smith*, 6 Mod. 261.

The modern courts are misled both by these old English cases and by a misunderstanding of the allegations. It is not necessary that there should be an end to all prosecution upon that charge, but that the particular prosecution complained of shall have been finished. Unless this were so, no action could be founded upon an *ignoramus* by the grand jury, nor upon a discharge in a preliminary hearing, for, in both these cases, new proceedings may be begun. Thus there would be no remedy in those cases where the charge was least justified. A *nolle prosequi*, when put into force by a discharge, ends the particular prosecution, and in order to proceed against the accused again a new prosecution must